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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 Mass, 3/F

425 I Street, N. W.

Washington, DC 20536

File:

Office: California Service Center Date:

JAN 29 2004

IN RE:

Applicant:

Application:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act,
8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner.
Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Cindy M. Gomez
Robert P. Wiemann, Director
Administrative Appeals Office for

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who indicated on his application that he entered the United States without a lawful admission or parole. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish he had: 1) continuously resided in the United States since February 13, 2001.

On appeal, the applicant submits additional evidence in support of the appeal.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for temporary protected status only if such alien establishes that he or she:

- (a) is a national of a state designated under section 244(b) of the Act;
- (b) has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) has continuously resided in the United States since such date as the Attorney General may designate;
- (d) is admissible as an immigrant under section 244.3;
- (e) is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) registers for TPS during the initial registration period, or
 - (2) registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:
 - (i) the applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) the applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or

subject to further review or appeal;

(iii) the applicant is a parolee or has a pending request for reparole; or

(iv) the applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he or

she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

On April 10, 2003, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

1. A letter from Wells Fargo Bank, Los Angeles, California, dated April 15, 2003, which states that the applicant has had an account with the bank since May 15, 2003;
2. A letter from the pastor of St. Thomas the Apostle, Los Angeles, California, who states that the applicant has been a member of the church since 2001;
3. A copy of the applicant's passport issued on April 11, 2003, in Los Angeles, California;
4. Copies of money transfer receipts dated February 7, 2000 and March 7, 2000 respectively, and;
5. A letter from the Eliot Hotel, [no identifying location], dated March 20, 2003, which stated that the applicant was a staff member from October 17, 1996 to July 1997.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on April 21, 2003. On appeal, the applicant submitted the following documentation:

6. Copies of his Employment Authorization Cards valid from February 13, 2002 through September 9, 2002, and September 10, 2002 through September 9, 2003;
7. An affidavit from [REDACTED] who states that the applicant lived in her home in March of 2001, and;
8. A copy of a letter from [REDACTED] Los Angeles, California, which states that the applicant remitted money to El Salvador on March 5, 2001.

The affidavit from Ms. [REDACTED] regarding the applicant's claimed presence in the United States before February 13, 2001, is not supported by corroborative evidence. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence or presence. The affidavit from the applicant's pastor has little evidentiary weight or probative value as it does not provide basic

information that is expressly required by 8 C.F.R. § 244.9(a)(2)(I). Specifically, the pastor does not explain the origin of the information to which he attests, or the date when he first encountered the applicant during 2001.

The employment affidavit from The Eliot Hotel also has little evidentiary or probative value as it does not provide basic information such as the address where the applicant resided during the period of his employment. It is further noted that the affiant did not indicate the location of the Hotel, or verify that the Hotel was even located in the United States.

The receipts and bank statements detailed above establish that the applicant may have been in the United States during 2000, 2001, 2002, and 2003. It appears that the applicant opened his bank account subsequent to his filing for TPS. It is also noted that the applicant submitted a copy of his purported Internal Revenue Service (IRS) Form W-2 Wage and Tax Statement for 2002; however, the IRS Form W-2 is handwritten and the social security number has been crossed out and changed to another number. The applicant has failed to submit sufficient evidence to establish that he has met the criteria described in 8 C.R.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.